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No. 82-1711

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

THE STATE OF COLORADO,

PETITIONER,

v.

FIDEL QUINTERO,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF COLORADO

PETITIONER'S OPENING BRIEF ON THE MERITS

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QUESTION

Whether the Colorado Supreme Court has misinterpreted the Fourth Amendment and has mistakenly applied the exclusionary rule to the seizure of stolen property, which was made incident to an arrest that police reasonably and in good faith believed to be supported by probable cause.

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CITATION TO OPINION BELOW
People v. Quintero,
657 P.2d 948 (Colo. 1983)

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The jurisdiction of this Court is invoked on two grounds:

(1) The Court has jurisdiction in all cases arising under the federal

constitution. U.S. CONST., art. III., §2, I.(1); and,

(2) The Court has jurisdiction "When a state court . . . has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court." Sup. Ct. R. 17.1(c).

The petition for a writ of certiorari was filed within 60 days of the date of the Colorado Supreme Court's order giving final effect to its interlocutory opinion, Sup. Ct. R. 20(1); and, on June 27, 1983, this Court granted the petition for a writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED

Pursuant to Sup. Ct. R. 34.1(f), the sole provision involved in this case

is set forth verbatim in pertinent part:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated;... U.S. CONST., amend. IV.

STATEMENT OF THE CASE

On September 29, 1981, at 12:45 p.m., Darlene Bergan was sweeping her porch at 691 South Vine Street, Denver, Colorado (J.A. 5, 7). She saw a man, whom she later identified as Fidel Quintero ("the defendant"), (J.A. 10), go up on the porch of a house across the street from her and peer into the front door and the front window for approximately twenty seconds each (J.A. 8). He then left the porch, walked north, and looked at the side of the house (J.A. 9). Mrs. Bergan thought that the man was acting "a little strange," and watched him continue

walking north until he crossed the street and disappeared from her sight. (J.A. 9).

Mrs. Bergan saw the defendant again about 40 minutes later, when he was standing at the bus stop in front of her house (J.A. 11). He had taken off his short-sleeved shirt and had thrown it over about a 19" television set (J.A. 11, 15). Defendant was "a little antsey" and was anxiously trying to hitchhike while waiting for the bus (J.A. 16). Mrs. Bergan had never before seen the defendant, in the neighborhood or elsewhere (J.A. 17).

Mrs. Bergan called the police (J.A. 15). The police radio dispatcher reported a possible burglary suspect at the bus stop at Vine and Exposition, wearing a T-shirt and with a television set covered with a shirt (J.A. 25, 26).

Officer Freeman, a Denver police officer for 21 years (J.A. 24), arrived within 5 minutes of Mrs. Bergan's call. (J.A. 16, 17). The officer saw the defendant in his undershirt, waiting by the bus stop and a television set in front of him with a shirt draped over it (J.A. 27). When the officer asked him for identification, the defendant had none and claimed that he had paid someone in the neighborhood $100 for the television set. (J.A. 28, 29).

When other officers arrived within 2-3 minutes, Mrs. Bergan made herself known as the person who had called them and she reported what she had seen. (J.A. 30, 31). After Mrs. Bergan identified herself, the defendant was arrested and searched. (J.A. 32). Although it was a hot day, with the temperature 80 degrees or above, (J.A. 27), the officers found a pair of brown

wool gloves in defendant's back pocket. (J.A. 33). Under the shirt was a television set and video game. (J.A. 34, 35).

Carol S. Rogers, who resided in the home in the next block south of Mrs. Bergans home, (J.A. 49) testified that she left her residence at about 12:50 p.m., and at that time the television set was in the house. (J.A. 50, 51). As already stated, this television set was in the possession of the defendant, at the bus stop, at 1:25 p.m. (J.A. 11, 15).

Later that day, David and Carol Rogers reported to police that their house at 791 South Vine, Denver, Colorado, had been burglarized and a television set and video game stolen. (J.A. 52-54). They identified the television set and video game recovered

from the defendant as the items taken in the burglary. (J.A. 46).

The defendant was charged by information with second degree burglary. (J.A. 1, 2). In a trial to the court, the court considered the trial evidence to determine both guilt and defendant's motion to suppress evidence seized at the time of his arrest. The trial court found defendant guilty of second degree burglary and denied the motion to suppress. Thereafter, the trial court granted defendant's motion for new trial and his motion to suppress.

The prosecution took an interlocutory appeal from the trial court's ruling to the Colorado Supreme Court, specifically requesting a review of the trial court's suppression of the television set, video game and gloves. The Colorado Supreme Court affirmed the

ruling of the trial court. People v. Quintero, 657 P.2d 948 (Colo. 1983).

SUMMARY OF ARGUMENT

The Supreme Court of the State of Colorado has mistakenly construed the Fourth Amendment to the federal constitution, in its application of the exclusionary rule to the facts of this case. Although the Court has expressly recognized that its Fourth Amendment decisions over the years point in differing directions, and differ in emphasis, certain constants are manifest throughout all of them. The opinion of the Colorado Supreme Court in People v. Quintero, 657 P.2d 948 (Colo. 1983) conflicts with those constants for the reasons here stated.

1. The Colorado opinion fails to consider the purpose and effect of the Fourth Amendment.

For over 100 years this Court has held that what the United States Constitution forbids is not all searches and seizures.

The record here before this Court negates an "unreasonable" search and seizure in this case. The undisputed facts establish a "reasonable" seizure of highly incriminating evidence.

The police had a reasonable, good faith belief that the seizure was lawful because made as an incident to arrest.

No constitutional norm requires the seizure to be converted retroactively to an "unreasonable" one by the opinion of the Colorado Supreme Court, issued several months after the arrest, in which the divided court ruled that the police made "a mistaken judgment of law" in deciding that they had probable cause to arrest.

2. The purposes for which the exclusionary rule was adopted are not served by the rule's application to the facts of this case.

By excluding evidence obtained in violation of a defendant's Fourth Amendment rights, a two-fold purpose was to be served: (1) to deter unlawful police conduct; and, (2) to promote judicial integrity. The undisputed circumstances involved in the instant seizure do not qualify realistically as "unlawful police conduct" requiring deterrence.

The imperative of judicial integrity would not be offended by admission of the evidence seized, because here the police reasonably believed in good faith that their conduct was in accordance with the law. Under these circumstances, deliberate exclusion of the truth from the

fact-finding process vitiates judicial integrity.

3. No indiscriminate application of the exclusionary rule is authorized by law, which requires a balancing of public and private interests.

This Court has disapproved indiscriminate application of the exclusionary rule, and it has consistently recognized that its inflexible application to all evidence obtained illegally would intolerably impede the truth-finding function of the trier of fact. The rule has never been interpreted by this Court to prohibit introduction of illegally seized evidence in all proceedings or against all persons. Instead, the Court has found the balancing process to be implicit in a determination of whether the exclusionary rule applies.

When the exclusionary rule is viewed stripped to its reason for existence, petitioner avers that the precedents of this Court refute that the exclusionary rule was ever contemplated to be applicable to the kind of circumstances presented by the case at bar.

The position of petitioner, the People of the State of Colorado, is this: where, as here, police officers acted reasonably and in good faith when they arrested the defendant, the exclusionary rule serves no efficacious purpose. Petitioner submits that this position is fair and feasible. The "reasonable person" is a long accepted and pervasive legal concept, with well-settled modes of evidentiary proof. "Good faith" is also no legal innovation and is provable, as is any other state of mind, including the mens rea of

criminal law. In asking for reversal of People v. Quintero, petitioner seeks no new rule of law, but instead urges the Court to declare that application of the exclusionary rule here conflicts with the Court's decisions.

ARGUMENT

THE COLORADO SUPREME COURT HAS MISINTERPRETED THE FOURTH AMENDMENT AND HAS MISTAKENLY APPLIED THE EXCLUSIONARY RULE TO THE SEIZURE OF STOLEN PROPERTY, WHICH WAS MADE INCIDENT TO AN ARREST THAT POLICE REASONABLY AND IN GOOD FAITH BELIEVED TO BE SUPPORTED BY PROBABLE CAUSE.

In this brief, petitioner assumes, arguendo, the position that there was an insufficient showing of probable cause to arrest respondent Fidel Quintero. Although the finding of no probable cause presented a highly debatable question as evidenced by the strong dissent of Justice Rovira of the Supreme

Court of Colorado, petitioner raises no issue with regard thereto in this proceeding. Petitioner also assumes, arguendo, that respondent had standing to raise the issue of Fourth Amendment rights, another debatable question.

The thrust of the opinion of the Supreme Court of Colorado is clearly stated in the following quotation from that opinion (found at page 24 of the petition for certiorari):

> The majority of the United States Supreme Court to date, however, has refused to recognize this good faith exception. See Taylor v. Alabama ___ U.S. ___, 102 S.Ct. 2554, 73 L.Ed.2d 314 (1982). Given such refusal, it would be inappropriate for this court to alter established Fourth Amendment doctrine by approving such an exception at this time.

Thus, the question here presented arises solely upon the defendant's asserted violation of Fourth Amendment rights. It involves only a

determination of this question: whether the exclusionary rule should be applied to prevent introduction of evidence taken as an incident to the arrest of a person under circumstances which the arresting officer reasonably and in good faith believed sufficient to give him probable cause to make the arrest.

I

THE SEIZURE UNDER EXAMINATION WAS NOT AN UNREASONABLE SEIZURE WITHIN THE CONTEMPLATION OF THE FOURTH AMENDMENT.

As stated above, the Fourth Amendment is designed to protect the People from "unreasonable" searches and seizures. Boyd v. United States, 116 U.S. 616; Weeks v. United States, 232 U.S. 383. In determining whether the seizure involved in this case was an "unreasonable" one, we must give consideration to the undisputed facts

and circumstances which were present at the time of the seizure. We briefly summarize the pertinent circumstances as follows:

On a hot summer day, a Denver woman saw a stranger in the neighborhood go to a neighbor's house, where he stood at the front door, next peered in the front window, and then went to the side of the house. He then disappeared from her view. When she saw him about 40 minutes later, he was standing at a nearby bus stop. He had taken off his shirt, which he had draped over a video game and a 19-inch television set. The woman described him as "antsey" and anxiously trying to "thumb a ride." She called the police.

When the police came, they asked the man -- later identified as Fidel Quintero -- for identification and he had none. He claimed that he had bought

the television set in the neighborhood for a $100.

The police did not arrest the defendant until Ms. Bergan identified herself as the person supplying the information to the police, which resulted in the arrival of Officer Freeman, and immediately thereafter Ms. Bergan gave him the details of her observations of defendant. These observations caused her, as a reasonable person, to believe that a burglary had been committed and she was fearful that the burglar at the bus stop would get away before the police arrived.

Police officers did not know which residence in the neighborhood had been burglarized until four or five hours after the arrest, but Officer Freeman had twenty-one years experience as a policeman, during which time he must have acquired a knowledge concerning the

activities of burglars. Law-abiding citizens do not carry woolen gloves in their hip pockets in plus 80 degree weather. However, woolen gloves leave no fingerprints. The conduct of Quintero observed by Ms. Bergan and related by her to the police was consistent with the known conduct of burglars who do not enter residence property, knowing in advance that the persons residing therein are home.

There can be no question whatever concerning the fact that Officer Freeman reasonably and in good faith believed that his conduct was consonant with existing law.

The Supreme Court of Colorado acknowledged that Officer Freeman "believed that probable cause existed to arrest Quintero." (Page 23 of Petition for Certiorari).

At the time Fidel Quintero filed his motion to suppress the evidence seized by the officers, he then stood before a court of justice as a person who indisputably was a burglar and a thief, who was caught "red handed" with the loot taken from a burglary committed by him within a few minutes prior to his arrest.

The reasonable good faith belief of Officer Freeman, i.e., that the seizure of the television set, the Atari game device, and the woolen gloves, was consonant with existing law, evinces that this seizure was reasonable, notwithstanding the fact that several months thereafter a judicial finding was entered to the effect that there was no probable cause to arrest Quintero.

II

THE PURPOSES FOR WHICH THE EXCLUSIONARY RULE WAS ADOPTED

ARE NOT SERVED BY THE RULE'S APPLICATION TO THE FACTS OF THIS CASE.

The exclusionary rule, by excluding in a criminal prosecution evidence obtained in violation of a defendant's Fourth Amendment rights, was designed to serve a two-fold purpose: to deter unlawful police conduct, Terry v. Ohio, 392 U.S. 1, 12; and, to promote judicial integrity. Elkins v. United States, 364 U.S. 206, 222.

In this case, the police reasonably thought that they had probable cause to arrest, with the concomitant good faith belief that the seizure incident to that arrest was thereby lawful. These circumstances do not qualify realistically as "unlawful police conduct" requiring deterrence.

The imperative of judicial integrity would not be offended by admission of the evidence seized,

because the police reasonably believed in good faith that their conduct was in accordance with the law. United States v. Peltier, 422 U.S. 531, 537-538. Under these circumstances, deliberate exclusion of the truth from the fact-finding process vitiates judicial integrity.

In evaluating the effectiveness of the first-mentioned justification for the exclusionary rule, deterrence of unlawful police conduct, as applied to the uncontradicted facts of this case, petitioner respectfully directs this Court's attention to a few of the many pertinent decisions of this Court.

In Stone v. Powell, 428 U.S. 465, 479, the Court stated that

> ...the exclusion of illegally seized evidence is simply a prophylactic devise intended generally to deter Fourth Amendment violations by law enforcement officers.

In that opinion the Court further stated at 486:

> The primary justification for the exclusionary rule then is the deterrence of police conduct that violates Fourth Amendment rights.

From Michigan v. Tucker, 417 U.S. 433, 447, petitioner quotes:

> The 'deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused. Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force.

By this action petitioner does not seek to bring about the abolishment of the exclusionary rule, notwithstanding our firm conviction that experience has

established the fact that it has failed to bring about the "deterrence of police conduct that violates Fourth Amendment rights" which this Court has stated was the "primary justification" for its existence.

After many years experience in the prosecution of criminal cases, involving countless motions to suppress evidence, petitioner's counsel appreciate the impact of the following statement of this Court taken from Stone v. Powell, supra, 428 U.S. at 486:

> But despite the broad deterrent purpose of the exclusionary rule, it has never been interpreted to proscribe the introduction of illegally seized evidence in all proceedings or against all persons. As in the case of any remedial device, "the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served."

If ever in the history of criminal justice there was a case in which application of the rule should be "restricted to those areas where its remedial objectives" are efficaciously served, the Quintero case vividly illustrates the need for such "restriction." We here urge this Court to give recognition to the fact that Officer Freeman reasonably and in good faith believed that he had probable cause to arrest respondent Quintero and, therefore, the "primary justification" for the rule is non-existent in this case. The "remedial objectives" of the rule could not possibly be served in any degree whatever.

If this Court were to hold to the contrary, Quintero, the burglar and the thief, caught with the loot from his crime within a few minutes of his criminal act, goes free, to the utter

amazement of the citizenry of the State of Colorado. Application of the exclusionary rule to the facts of this case, and the wide publicity connected therewith, has already contributed substantially to the waning public confidence in the integrity of the criminal justice system. Petitioner respectfully submits that this is a matter proper for consideration in determining when, and under what circumstances, the rule should be applied. As stated by Mr. Justice Powell in Stone v. Powell, supra, 428 U.S. at 490, 491:

> Thus, although the rule is thought to deter unlawful police activity in part through the nurturing of respect for Fourth Amendment values, if applied indiscriminately it may well have the opposite effect of generating disrespect for the law and administration of justice.

Footnote 30 in connection with this quotation cites Oaks, Ethics, Morality and Professional Responsibility, 1975 B.Y.U.L. Rev. 591, 596, as follows:

> I am criticizing, not our concern with procedures, but our preoccupation, in which we may lose sight of the fact that our procedures are not the ultimate goals of our legal system. Our goals are truth and justice, and procedures are but means to these ends. . . .
> Truth and justice are ultimate values, so understood by our people, and the law and the legal profession will not be worthy of public respect and loyalty if we allow our attention to be diverted from these goals.

With reference to the second justification for the exclusionary rule, which has been mentioned in a few decisions of this Court, i.e., "the imperative of judicial integrity", we believe that its importance as a basis for suppressing highly incriminating evidence has been substantially

discounted, if not completely eliminated. Consistent with its views relating to the primary justification for the exclusionary rule this Court, in recent decisions has declined to utilize the "imperative of judicial integrity" in situations where it would achieve no deterrence, as in the instant case.

The following cases illustrate the failure of this Court to use "the imperative of judicial integrity" to justify suppression of evidence in matters involving no deterrent effect.

In United States v. Peltier, 422 U.S. 531, no retroactive effect was ordered in connection with a search and seizure ruling, for the reason that suppression would serve no deterrent purpose.

In Desist v. United States, 394 U.S. 244, n. 24, the Court stated:

> [W]e simply decline to extend the court-made exclusionary rule to cases in which its deterrent purpose would not be served.

In United States v. Calandra, 414 U.S. 338, any "incremental deterrent effect" did not require the extension of the exclusionary rule to proceedings before the grand jury.

In Stone v. Powell, supra, any "incremental deterrent effect" of permitting search and seizure claims to be raised on federal collateral review of state convictions was "outweighed by the acknowledged costs to other values vital to a rational system of criminal justice."

To like effect is United States v. Janis, 428 U.S. 433, as well as Alderman v. United States, 394 U.S. 165.

The "imperative of judicial integrity" could have been cited as justification for extension of the

exclusionary rule to the different situations presented in the cases above cited. But this Court did not do so.

The case of Quintero is one in which neither deterrence nor the so-called "imperative of judicial integrity" could possibly be "efficaciously served" by application of the rule of exclusion.

This Court stated in United States v. Peltier, 422 U.S. 531, at 537, that where:

> ...law enforcement officers reasonably believed in good faith that evidence they had seized was admissible at trial, the "imperative of judicial integrity" is not offended by the introduction into evidence of that material even if decisions subsequent to the search or seizure have broadened the exclusionary rule to encompass evidence seized in that manner.

III

NO INDISCRIMINATE APPLICATION OF THE EXCLUSIONARY RULE IS

AUTHORIZED BY LAW, WHICH REQUIRES A BALANCING OF PUBLIC AND PRIVATE INTERESTS.

One of the constants appearing over the years in this Court's opinions dealing with the exclusionary rule is that the rule should not be indiscriminately applied in all proceedings or against all persons. E.g., Terry v. Ohio, 392 U.S. 1, 15; United States v. Payner, 447 U.S. 727, 734. This Court has consistently recognized that inflexible application of the exclusionary sanction to all evidence obtained illegally would intolerably impede the truth-finding function of the trier of the facts.

In United States v. Payner, 447 U.S. 727, 734 is the following pertinent language:

> But our cases also show that these unexceptional principles do not command the exclusion

> of evidence in every case of illegality. Instead, they must be weighed against the considerable harm that would flow from indiscriminate application of an exclusionary rule.
>
> Thus, the exclusionary rule "has been restricted to those areas where its remedial objectives are most efficaciously served." (Citing United States v. Calandra, 414 U.S. 338.)

For example, after balancing the interests involved, the Court has refused to extend the exclusionary rule to use of unlawfully seized evidence used to impeach a defendant who testified in his own defense, Walder v. United States, 347 U.S. 62; grand jury proceedings, United States v. Calandra, 414 U.S 338; collateral review of Fourth Amendment claims, Stone v. Powell, 428 U.S. 465; live-witness testimony, United States v. Ceccolini, 435 U.S. 268; and, evidence seized in violation of a third party's rights, United States v. Payner,

447 U.S. 727; Rakas v. Illinois, 439 U.S. 128. The constant in each of these examples is that application of the exclusionary rule has been denied because, based upon a balancing of the public and individual interests involved, the rule's remedial objectives would not be efficaciously served.

Application of the foregoing principles to this case demonstrates that, when the conflicting interests are balanced, the Colorado Supreme Court mistakenly applied the exclusionary rule. The public interest here is strong. A neighbor's concerned watchfulness resulted in the burglar being apprehended by police before he could leave the neighborhood with the property that he had just stolen. This Court has declared that it is no part of the policy of the Fourth and Fourteenth Amendments to discourage citizens from

aiding to their utmost ability in the apprehension of criminals. Coolidge v. New Hampshire, 403 U.S. 443, 488. A result of the state court opinion in this case is citizens' frustration of efforts to prevent crime. Terry v. Ohio, 392 U.S. 1, 15.

Moreover, the police reasonably believed in good faith, as the record reflects (J.A. 16, 17), that they had made a lawful stop and a lawful arrest. Although the Colorado Supreme Court later ruled that the officers had made "a mistaken judgment of law", society is ill-served by imposing upon police officers the duty to make correct legal judgments eo instante when apprehending criminals, or the criminal will go free. Cf. Michigan v. DeFillippo, 443 U.S. 31, 38. The rationale for the exclusionary rule loses its force when officers act both reasonably and with

good faith that their conduct is lawful -- although a court may long after rule otherwise.

The defendant's interest here is that his arrest was deemed by the state appellate court to have been made without probable cause, and hence the seizure of the property that he had indisputably stolen should not be admitted into evidence against him. The record, however, discloses no oppressive interrogation, no coercion, no brutality, and no other quality of purposeful illegality on the part of the police.

Upon balance, therefore, application of the exclusionary rule here has exacted a substantial social cost for vindication of, at most, a minimal intrusion on defendant's Fourth Amendment rights. Rakas v. Illinois, 439 U.S. 128. The remedial objective of

the exclusionary rule has not been efficaciously served: the officers reasonably believed that they had acted lawfully; the imperative of judicial integrity would not have been offended because the police officers reasonably believed in good faith that their conduct was in accordance with law. United States v. Peltier, 422 U.S. 531, 538.

In sum, the Colorado Supreme Court has misinterpreted the Fourth Amendment and has mistakenly applied the exclusionary rule to this case. Petitioner is aware of the mass of reported federal and state decisions, as well as the mass, if not morass of scholarly treatises, concerning the exclusionary rule. But no talismanic formula is practicable or needed. When the exclusionary rule is viewed stripped to its reason for existence, petitioner

avers that the precedents of this Court refute that the exclusionary rule was ever contemplated to be applicable to the kind of circumstances presented by the case at bar.

The position of petitioner, the People of the State of Colorado, is this: where, as here, police officers acted reasonably and in good faith when they arrested respondent Quintero, the exclusionary rule serves no efficacious purpose. Petitioner submits that this position is fair and feasible. The "reasonable person" is a long accepted and pervasive legal concept, with well-settled modes of evidentiary proof. "Good faith" is also no legal innovation and is provable, as is any other state of mind, including the mens rea of criminal law. In asking for reversal of People v. Quintero, supra, petitioner seeks no new rule of law, but instead

urges the Court to declare that application of the exclusionary rule here conflicts with the Court's decisions.

Many years ago in 1925, a distinguished member of the Supreme Court of Colorado, the Honorable Hazlett P. Burke, who served for thirty years on that court, authored an opinion rejecting the broad concepts now embodied in the exclusionary rule. Massantonio v. People, 77 Colo. 392, 236 P. 1019. In that opinion he "endeavored to follow that rule which, in our judgment, leaves the law a sword to the state and a shield to the citizen without converting it into a bomb proof dugout for their enemies." Reporter at 1020.

To apply the exclusionary rule to the facts of this case would indeed deprive the state of the use of a

"sword", and remove the "shield" as a protection to the citizen, and would convert the exclusionary rule into a "bomb proof dugout" for the enemies of the state and the citizen.

Reversal of the cause before this court will restore "a sword to the state and a shield to the citizen," and it will help to eliminate the "bomb proof dugout" for their enemies.

CONCLUSION

The petitioner concludes, for the reasons stated in this brief and supported by the record, that the Colorado Supreme Court erroneously applied the exclusionary rule to a factual situation which does not lie within the area intended to be covered by that rule.

No purpose which this Court has stated justifies that the existence of

the rule is "efficaciously served" by application of the rule to the facts of this case. Such application will not deter willful and abusive police misconduct. The "imperative of judicial integrity" is not served. To the contrary, application of the rule to this case tends to destroy any public confidence in the integrity of the criminal justice system.

We aver that the opinion of the Colorado Supreme Court failed to recognize at least three constant principles which are found in the decisions of this Court, namely:

(1) Only "unreasonable" seizures are prohibited by the Fourth Amendment. The seizure in this case was not unreasonable.

(2) The purposes for which the exclusionary rule was adopted are not served by application of that rule to

the facts of this case.

(3) Application of the rule of exclusion to the facts of this case amounts to an indiscriminate use thereof, and fails to take into account a balancing of the public and private interests involved.

WHEREFORE, the petitioner prays that the decision of the Supreme Court of Colorado be reversed, with directions to order trial of the issues permitting the admission of the evidence suppressed by the Colorado court.

Respectfully submitted,

THE STATE OF COLORADO,
Petitioner

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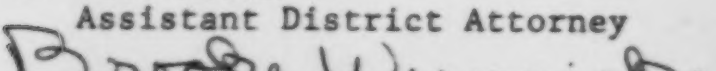

BROOKE WUNNICKE
Chief Appellate Deputy
District Attorney

SEPTEMBER 9, 1983.

CERTIFICATE OF SERVICE

Pursuant to Sup. Ct. R. 28.5(b), I hereby certify that 3 copies of the foregoing petitioner's opening brief on the merits have been served upon counsel for respondent, Thomas M. Van Cleave III., Deputy State Public Defender, Appellate Division, by personal delivery on Friday, September 9, 1983, to an employee in his office at 1575 Sherman Street, Denver, Colorado 80203.

Brooke Wunnicke

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